

No. 82

COUNTY CLERK—RECORDS—TRACT INDICES

Held: Public has right to inspect tract indices maintained by county during office hours of County Clerk and subject to reasonable regulation.

April 16, 1941.

Mr. Edward T. Dussault
County Attorney
County of Missoula
Missoula, Montana

Dear Mr. Dussault:

You inquire as to whether or not tract indices, maintained by a county for its own use in making abstracts, are open to the public for inspection.

It is, of course, settled in this State that a county may expend county funds for a tract index (*Ransom v. Pingel, et al.*, 104 Mont. 119, 65 Pac. (2nd) 616).

Section 455 of the Revised Codes of Montana, 1935, affords the following right:

"455. **Records Open to Public Inspection—Exceptions.** The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the Clerk of the Court with whom the complaint is filed must not make public the facts of the filing of the complaint, or the issuing of such attachment, until after the filing of return of service of attachment."

It is unnecessary to decide the question as to whether or not such indices constitute "public records" as they come within the purview of the phrase "and other matters," as construed in *State ex rel. Holloran v. McGrath*, 104 Mont. 490, 67 Pac. (2nd) 838.

The precise question presented was asked and answered in *Chicago Title & Trust Co. v. Danforth, et al.*, 236 Ill. 554, 86 N. E. 364, in the following form:

"Is there, then, any warrant in law for discriminating between the public records which the Recorder keeps in connection with his abstract business and the original records from which these books were made?"

"We are wholly unable to differentiate between the right to inspect and examine and take memoranda and abstracts from abstract books and the other records required by law to be kept in the Recorder's office."

The right to inspect is subject, naturally, to reasonable regulation to prevent interference with the orderly conduct of the Clerk's office.

State ex rel. Holloran v. McGrath, supra;

Upton v. Catlin, 17 Colo. 546, 31 Pac. 172;

Atlanta & Co. v. Tidwell, 173 Ga. 499, 160 S. E. 620.

We agree with the opinion of a former Attorney General (Volume 18, Opinions of the Attorney General, No. 264) in this respect, and are of the opinion that the public, including abstracters, have a right to inspect these tract indices maintained by the county, during office hours, subject only to reasonable regulation.

Sincerely yours,

JOHN W. BONNER,
Attorney General